

STATE OF INDIANA)
)
COUNTY OF ELKHART)

IN THE ELKHART CIRCUIT COURT

CAUSE NO. **20001 0403 PL 150**

STATE OF INDIANA,

Plaintiff,

v.

CHRIS PUNTNEY,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

FILED

MAR 3 1 2004

CLERK ELKHART CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. The Defendant, Chris Puntney, ("Puntney"), is an individual engaged in the sale of items via the Internet, with a principle place of business located at 123 W. Hively Avenue, Apartment K126, Elkhart, Indiana, 46517.

FACTS

3. At least since June 1, 2003, the Defendant has repeatedly offered items for sale via the Internet to consumers.

Allegations regarding Paul Hankins.

4. On or about June 1, 2003, the Defendant entered into a contract with Paul Hankins ("Hankins") of Washington, DC, wherein the Defendant represented that he would sell Home Depot Gift Cards to Hankins for Nine Hundred Twenty-Seven Dollars (\$927.00), which Hankins paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the gift cards within a reasonable period of time.

6. The Defendant has yet to either issue a refund, or to deliver the gift cards to Hankins.

Allegations regarding Anna Luna.

7. On or about July 7, 2003, the Defendant entered into a contract with Anna Luna ("Luna") of Amarillo, Texas, wherein the Defendant represented that he would sell a Virgin Mobile Super Model Kyocera 2255 NR cell phone with prepaid service to Luna for Sixty-Six Dollars (\$66.00), which Luna paid.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would complete the represented transaction within a reasonable period of time.

9. While the Defendant did ship the cell phone to Luna, shortly thereafter the Defendant had Luna's telephone service turned off.

10. The Defendant has yet to either issue a refund, or to reinstate service on Luna's cellular telephone.

Allegations regarding Arturo Rabanal.

11. On or about July 5, 2003, the Defendant entered into a contract with Arturo Rabanal ("Rabanal") of West Hempstead, New York, wherein the Defendant represented that he would sell a Virgin Mobile Audiovox 8500 cell phone to Rabanal for Ninety-Seven Dollars and Sixty-Nine Cents (\$97.69), which Rabanal paid.

12. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the cell phone to Rabanal within a reasonable period of time.

13. The Defendant has yet to either issue a refund, or to deliver the cell phone to Rabanal.

Allegations regarding Tim Truesdell.

14. On or about July 6, 2003, the Defendant entered into a contract with Tim Truesdell ("Truesdell") of Las Vegas, Nevada, wherein the Defendant represented that he would sell a Clarion in-dash DVD player to Truesdell for Eight Hundred and Seventy-Five Dollars (\$875.00), which Truesdell paid.

15. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the DVD player to Truesdell within a reasonable period of time.

16. The Defendant has yet to either issue a refund, or to deliver the DVD player to Truesdell.

Allegations regarding Polly Smith.

17. On or about July 29, 2003, the Defendant entered into a contract with Polly Smith ("Smith") of Silvis, Illinois, wherein the Defendant represented that he would sell two (2) Abercrombie gift cards to Smith for Two Hundred and Fifty Dollars (\$250.00), which Smith paid.

18. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the gift cards to Smith within a reasonable period of time.

19. The Defendant has yet to either issue a refund, or to ship the gift cards to Smith.

Allegations regarding Crystal Martin.

20. On or about August 13, 2003, the Defendant entered into a contract with Crystal Martin ("Martin") of Citrus Heights, California, wherein the Defendant represented that he would sell two (2) Lowe's gift cards to Martin for Eight Hundred and Sixteen Dollars (\$816.00), which Martin paid.

21. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the gift cards to Martin within a reasonable period of time.

22. The Defendant has yet to either issue a refund, or to ship the gift cards to Martin.

Allegations regarding Nick Barkhurst.

23. On or about September 11, 2003, the Defendant entered into a contract with Nick Barkhurst ("Barkhurst") of Wichita, Kansas, wherein the Defendant represented that he would sell Barkhurst a Samsung V205 cell phone to Barkhurst for One Hundred Seventy-Three Dollars and Thirty-Two Cents (\$173.32), which Barkhurst paid.

24. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phone to Barkhurst within a reasonable period of time.

25. The Defendant has yet to either issue a refund, or to ship the phone to Barkhurst.

Allegations regarding Luan Bui.

26. On or about September 11, 2003, the Defendant entered into a contract with Luan Bui ("Bui") of San Diego, California, wherein the Defendant represented that he would sell Bui a Samsung V205 cell phone to Bui for One Hundred and Fifty Dollars (\$150.00), which Bui paid.

27. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phone to Bui within a reasonable period of time.

28. The Defendant has yet to either issue a refund, or to ship the phone to Bui.

Allegations regarding Steve Pasowicz.

29. On or about September 12, 2003, the Defendant entered into a contract with Steve Pasowicz ("Pasowicz") of Killeen, Texas, wherein the Defendant represented that he would sell a Samsung V205 cell phone to Pasowicz for One Hundred Fifty Dollars (\$150.00), which Pasowicz paid.

30. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phone to Pasowicz within a reasonable period of time.

31. The Defendant has yet to either issue a refund, or to ship the phone to Pasowicz.

Allegations regarding Dustin Weller.

32. On or about September 15, 2003, the Defendant entered into a contract with Dustin Weller ("Weller") of North Ogden, Utah, wherein the Defendant represented that he would sell two (2) Samsung V205 cell phones to Weller for Three Hundred Dollars (\$300.00), which Weller paid.

33. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phones to Weller within a reasonable period of time.

34. The Defendant has yet to either issue a refund, or to ship the phones to Weller.

Allegations regarding Erin Dooley.

35. On or about September 15, 2003, the Defendant entered into a contract with Erin Dooley ("Dooley") of Bristol, Connecticut, wherein the Defendant represented that he would sell a Samsung V205 cell phone to Dooley for One Hundred and Fifty Dollars (\$150.00), which Dooley paid.

36. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phone to Dooley within a reasonable period of time.

37. The Defendant has yet to either issue a refund, or to ship the phone to Dooley.

Allegations regarding Emily Chon.

38. On or about September 19, 2003, the Defendant entered into a contract with Emily Chon ("Chon") of Lorton, Virginia, wherein the Defendant represented that he would sell a Samsung V205 cell phone to Chon for One Hundred Fifty Dollars (\$150.00), which Chon paid.

39. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phone to Chon within a reasonable period of time.

40. The Defendant has yet to either issue a refund, or to ship the phone to Chon.

Allegations regarding Astrid Franco.

41. On or about September 20, 2003, the Defendant entered into a contract with Astrid Franco ("Franco") of Santiago, Dominican Republic, wherein the Defendant represented that he would sell a Samsung V205 cell phone to Franco for One Hundred Fifty Dollars (\$150.00), which Franco paid.

42. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phone to Franco within a reasonable period of time.

43. The Defendant has yet to either issue a refund, or to ship the phone to Franco.

Allegations regarding Timothy Hildreth.

44. On or about September 21, 2003, the Defendant entered into a contract with Timothy Hildreth ("Hildreth") of Henderson, Nevada, wherein the Defendant represented that he would sell a Samsung V205 cell phone to Hildreth for One Hundred and Seventy-Five Dollars (\$175.00), which Hildreth paid.

45. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the phone to Hildreth within a reasonable period of time.

46. The Defendant has yet to either issue a refund, or to ship the phone to Hildreth.

Allegations regarding Julie Lasky.

47. On or about September 23, 2003, the Defendant entered into a contract with Julie Lasky ("Lasky") of Albany, New York, wherein the Defendant represented that he would sell four (4) Abercrombie gift cards to Lasky for Six Hundred Dollars (\$600.00), which Lasky paid.

48. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the gift cards to Lasky within a reasonable period of time.

49. The Defendant has yet to either issue a refund, or to ship the gift cards to Lasky.

Allegations regarding Kwan Chan.

50. On or about November 25, 2003, the Defendant entered into a contract with Kwan Chan ("Chan") of Quincy, Massachusetts, wherein the Defendant represented that he would sell a PS2 video game to Lasky for Forty-Two Dollars and Ninety-Five Dollars (\$42.95), which Chan paid.

51. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale that he would ship the video game to Chan within a reasonable period of time.

52. The Defendant has yet to either issue a refund, or to ship the video game to Chan.

COUNT I-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

53. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 52 above.

54. The transactions referred to in paragraphs 4, 7, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, and 50, are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

55. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

56. The Defendant's representations to consumers that he would sell consumers the items, when the Defendant knew or reasonably should have known that he would not sell the items, as referenced in paragraphs 4, 7, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, and 50, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

57. The Defendant's representations to consumers that the Defendant would deliver the items, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known that he would not, as referenced in paragraphs 5, 8, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42, 45, 48, and 51, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

58. The Defendant's representations that consumers would be able to purchase the advertised items, when the Defendant knew or reasonably should have known that he did not intend to sell the items, as referenced in paragraphs 4, 7, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, and 50, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II- KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

59. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 58 above.

60. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 7, 8, 11, 12, 14, 15, 17, 18, 20, 21, 23, 24, 26, 27, 29, 30, 32, 33, 35, 36, 38, 39, 41, 42, 44, 45, 47, 48, 50, and 51 were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Chris Puntney, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;
- b. representing expressly or by implication that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know that it can not; and
- c. representing expressly or by implication that a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

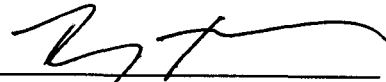
- a. cancellation of the Defendant's unlawful contracts with consumers, including but not limited to the persons identified in paragraphs 4, 7, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, and 50, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of the Defendant's items via the Internet, including but not limited to, the persons identified in paragraphs 4, 7, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, and 50, in an amount to be determined at trial;
- c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;
- e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300